



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

August 27, 2021

VIA ECF

MEMORANDUM ENDORSEMENT

The Honorable Gabriel W. Gorenstein
United States Magistrate Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, N.Y. 10007

Re: *Schulte v. Bureau of Prisons et al.*, 20 Civ. 2795 (PGG) (GWG)

Dear Judge Gorenstein:

We represent defendants Timothy Valentine, John Barrett, Michael Sinkovich, Mark Burns, Michael Getchey, and Jamey Welch (the "Individual Defendants"), as well as defendant United States of America, in the above-captioned action. On behalf of the Individual Defendants, I write respectfully in response to the Court's August 9, 2021 order. (Dkt. #56). Each of the Individual Defendants was properly served and intends to file a motion to dismiss the complaint before Judge Gardephe on the grounds, *inter alia*, that the plaintiff does not state a claim against the Individual Defendants pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). The Individual Defendants respectfully request that they be permitted to file such motion to dismiss by September 24, 2021.

Further, there is an additional defendant in this action being sued in his individual capacity, Brian Thiroway. Like the other Individual Defendants, Mr. Thiroway is an employee of the Federal Bureau of Prisons. While we are authorized to represent Mr. Thiroway, since being assigned to this case approximately three weeks ago, we have been unable to get in touch with Mr. Thiroway. We understand Mr. Thiroway to have been off from duty for at least part of this time. Accordingly, on Mr. Thiroway's behalf, we respectfully request an additional week, or until September 3, 2021, to notify the Court whether Mr. Thiroway has been properly served and, like the other Individual Defendants, will be filing a motion to dismiss.

Thank you for your consideration of this request.

Respectfully,

AUDREY STRAUSS
United States Attorney
Southern District of New York

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The proposed motion to dismiss shall be returnable before Judge Gardephe, shall comply with his Individual Practices, and shall be filed on or before September 24, 2021.

The time for Brian Thioway to comply with the Court's Order of August 9, 2021, is extended to September 3, 2021.

The Clerk is directed to mail a copy of this Order to plaintiff.

So Ordered.



GABRIEL W. GORENSTEIN
United States Magistrate Judge

August 27, 2021